

108TH CONGRESS
1ST SESSION

H. R. 5

To improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 2003

Mr. GREENWOOD (for himself, Mr. MURTHA, Mr. COX, Mr. SENSENBRENNER, Mr. TAUZIN, Mr. THOMAS, Mr. GOODE, Mr. FERGUSON, Mr. GERLACH, Mrs. CAPITO, Mr. FEENEY, Mr. KIRK, Mrs. BIGGERT, Mr. PLATTS, Mr. SHAYS, Mr. FRELINGHUYSEN, Mr. MURPHY, Mr. PETERSON of Minnesota, Mr. LUCAS of Kentucky, Mr. STENHOLM, Mr. TAYLOR of Mississippi, Mr. HOBSON, Ms. GRANGER, Mrs. JOHNSON of Connecticut, Ms. DUNN, Mr. ROGERS of Michigan, Ms. GINNY BROWN-WAITE of Florida, Mr. HAYES, Mr. LEACH, Mr. OTTER, Mr. GRAVES, Mr. LATOURETTE, Mr. FLETCHER, Mr. WELDON of Florida, Mr. TIBERI, Mr. HAYWORTH, Mr. CRANE, Mr. PORTMAN, Mr. SULLIVAN, Mr. SOUDER, Mr. CANNON, Mr. SHAW, Mr. MCHUGH, Mr. MCKEON, Mr. LEWIS of Kentucky, Mrs. NORTHUP, Mr. SESSIONS, Mr. HULSHOF, Mr. PUTNAM, Mr. GILCHREST, Mr. KNOLLENBERG, Mr. HOUGHTON, Mr. REGULA, Mr. TOM DAVIS of Virginia, Mr. FORBES, Mr. PETERSON of Pennsylvania, Mr. LOBIONDO, Mr. BOEHLERT, Mr. NUSSLE, Mr. SHUSTER, Mr. TIAHRT, Mr. STEARNS, Mr. GILLMOR, Ms. HART, Mr. WALSH, Mr. CRENSHAW, Mr. BARTON of Texas, Mr. KELLER, and Mr. COLLINS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To improve patient access to health care services and provide improved medical care by reducing the excessive burden

the liability system places on the health care delivery system.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Help Efficient, Acces-
 5 sible, Low-Cost, Timely Healthcare (HEALTH) Act of
 6 2003”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—

9 (1) EFFECT ON HEALTH CARE ACCESS AND
 10 COSTS.—Congress finds that our current civil justice
 11 system is adversely affecting patient access to health
 12 care services, better patient care, and cost-efficient
 13 health care, in that the health care liability system
 14 is a costly and ineffective mechanism for resolving
 15 claims of health care liability and compensating in-
 16 jured patients, and is a deterrent to the sharing of
 17 information among health care professionals which
 18 impedes efforts to improve patient safety and quality
 19 of care.

20 (2) EFFECT ON INTERSTATE COMMERCE.—

21 Congress finds that the health care and insurance
 22 industries are industries affecting interstate com-
 23 merce and the health care liability litigation systems
 24 existing throughout the United States are activities

1 that affect interstate commerce by contributing to
2 the high costs of health care and premiums for
3 health care liability insurance purchased by health
4 care system providers.

5 (3) EFFECT ON FEDERAL SPENDING.—Con-
6 gress finds that the health care liability litigation
7 systems existing throughout the United States have
8 a significant effect on the amount, distribution, and
9 use of Federal funds because of—

10 (A) the large number of individuals who
11 receive health care benefits under programs op-
12 erated or financed by the Federal Government;

13 (B) the large number of individuals who
14 benefit because of the exclusion from Federal
15 taxes of the amounts spent to provide them
16 with health insurance benefits; and

17 (C) the large number of health care pro-
18 viders who provide items or services for which
19 the Federal Government makes payments.

20 (b) PURPOSE.—It is the purpose of this Act to imple-
21 ment reasonable, comprehensive, and effective health care
22 liability reforms designed to—

23 (1) improve the availability of health care serv-
24 ices in cases in which health care liability actions

1 have been shown to be a factor in the decreased
2 availability of services;

3 (2) reduce the incidence of “defensive medi-
4 cine” and lower the cost of health care liability in-
5 surance, all of which contribute to the escalation of
6 health care costs;

7 (3) ensure that persons with meritorious health
8 care injury claims receive fair and adequate com-
9 pensation, including reasonable noneconomic dam-
10 ages;

11 (4) improve the fairness and cost-effectiveness
12 of our current health care liability system to resolve
13 disputes over, and provide compensation for, health
14 care liability by reducing uncertainty in the amount
15 of compensation provided to injured individuals;

16 (5) provide an increased sharing of information
17 in the health care system which will reduce unin-
18 tended injury and improve patient care.

19 **SEC. 3. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.**

20 The time for the commencement of a health care law-
21 suit shall be 3 years after the date of manifestation of
22 injury or 1 year after the claimant discovers, or through
23 the use of reasonable diligence should have discovered, the
24 injury, whichever occurs first. In no event shall the time
25 for commencement of a health care lawsuit exceed 3 years

1 after the date of manifestation of injury unless tolled for
2 any of the following:

3 (1) Upon proof of fraud;

4 (2) Intentional concealment; or

5 (3) The presence of a foreign body, which has
6 no therapeutic or diagnostic purpose or effect, in the
7 person of the injured person.

8 Actions by a minor shall be commenced within 3 years
9 from the date of the alleged manifestation of injury except
10 that actions by a minor under the full age of 6 years shall
11 be commenced within 3 years of manifestation of injury
12 or prior to the minor's 8th birthday, whichever provides
13 a longer period. Such time limitation shall be tolled for
14 minors for any period during which a parent or guardian
15 and a health care provider or health care organization
16 have committed fraud or collusion in the failure to bring
17 an action on behalf of the injured minor.

18 **SEC. 4. COMPENSATING PATIENT INJURY.**

19 (a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
20 ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
21 health care lawsuit, the full amount of a claimant's eco-
22 nomic loss may be fully recovered without limitation.

23 (b) ADDITIONAL NONECONOMIC DAMAGES.—In any
24 health care lawsuit, the amount of noneconomic damages
25 recovered may be as much as \$250,000, regardless of the

1 number of parties against whom the action is brought or
2 the number of separate claims or actions brought with re-
3 spect to the same occurrence.

4 (c) NO DISCOUNT OF AWARD FOR NONECONOMIC
5 DAMAGES.—In any health care lawsuit, an award for fu-
6 ture noneconomic damages shall not be discounted to
7 present value. The jury shall not be informed about the
8 maximum award for noneconomic damages. An award for
9 noneconomic damages in excess of \$250,000 shall be re-
10 duced either before the entry of judgment, or by amend-
11 ment of the judgment after entry of judgment, and such
12 reduction shall be made before accounting for any other
13 reduction in damages required by law. If separate awards
14 are rendered for past and future noneconomic damages
15 and the combined awards exceed \$250,000, the future
16 noneconomic damages shall be reduced first.

17 (d) FAIR SHARE RULE.—In any health care lawsuit,
18 each party shall be liable for that party's several share
19 of any damages only and not for the share of any other
20 person. Each party shall be liable only for the amount of
21 damages allocated to such party in direct proportion to
22 such party's percentage of responsibility. A separate judg-
23 ment shall be rendered against each such party for the
24 amount allocated to such party. For purposes of this sec-

tion, the trier of fact shall determine the proportion of responsibility of each party for the claimant's harm.

SEC. 5. MAXIMIZING PATIENT RECOVERY.

(a) COURT SUPERVISION OF SHARE OF DAMAGES ACTUALLY PAID TO CLAIMANTS.—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant's damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:

(1) 40 percent of the first \$50,000 recovered by the claimant(s).

(2) $33\frac{1}{3}$ percent of the next \$50,000 recovered by the claimant(s).

(3) 25 percent of the next \$500,000 recovered by the claimant(s).

1 (4) 15 percent of any amount by which the re-
2 covery by the claimant(s) is in excess of \$600,000.

3 (b) APPLICABILITY.—The limitations in this section
4 shall apply whether the recovery is by judgment, settle-
5 ment, mediation, arbitration, or any other form of alter-
6 native dispute resolution. In a health care lawsuit involv-
7 ing a minor or incompetent person, a court retains the
8 authority to authorize or approve a fee that is less than
9 the maximum permitted under this section.

10 **SEC. 6. ADDITIONAL HEALTH BENEFITS.**

11 In any health care lawsuit, any party may introduce
12 evidence of collateral source benefits. If a party elects to
13 introduce such evidence, any opposing party may intro-
14 duce evidence of any amount paid or contributed or rea-
15 sonably likely to be paid or contributed in the future by
16 or on behalf of the opposing party to secure the right to
17 such collateral source benefits. No provider of collateral
18 source benefits shall recover any amount against the
19 claimant or receive any lien or credit against the claim-
20 ant's recovery or be equitably or legally subrogated to the
21 right of the claimant in a health care lawsuit. This section
22 shall apply to any health care lawsuit that is settled as
23 well as a health care lawsuit that is resolved by a fact
24 finder. This section shall not apply to section 1862(b) (42

1 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C.
2 1396a(a)(25)) of the Social Security Act.

3 **SEC. 7. PUNITIVE DAMAGES.**

4 (a) IN GENERAL.—Punitive damages may, if other-
5 wise permitted by applicable State or Federal law, be
6 awarded against any person in a health care lawsuit only
7 if it is proven by clear and convincing evidence that such
8 person acted with malicious intent to injure the claimant,
9 or that such person deliberately failed to avoid unneces-
10 sary injury that such person knew the claimant was sub-
11 stantially certain to suffer. In any health care lawsuit
12 where no judgment for compensatory damages is rendered
13 against such person, no punitive damages may be awarded
14 with respect to the claim in such lawsuit. No demand for
15 punitive damages shall be included in a health care lawsuit
16 as initially filed. A court may allow a claimant to file an
17 amended pleading for punitive damages only upon a mo-
18 tion by the claimant and after a finding by the court, upon
19 review of supporting and opposing affidavits or after a
20 hearing, after weighing the evidence, that the claimant has
21 established by a substantial probability that the claimant
22 will prevail on the claim for punitive damages. At the re-
23 quest of any party in a health care lawsuit, the trier of
24 fact shall consider in a separate proceeding—

1 (1) whether punitive damages are to be award-
2 ed and the amount of such award; and

3 (2) the amount of punitive damages following a
4 determination of punitive liability.

5 If a separate proceeding is requested, evidence relevant
6 only to the claim for punitive damages, as determined by
7 applicable State law, shall be inadmissible in any pro-
8 ceeding to determine whether compensatory damages are
9 to be awarded.

10 (b) DETERMINING AMOUNT OF PUNITIVE DAM-
11 AGES.—

12 (1) FACTORS CONSIDERED.—In determining
13 the amount of punitive damages, if awarded, in a
14 health care lawsuit, the trier of fact shall consider
15 only the following:

16 (A) the severity of the harm caused by the
17 conduct of such party;

18 (B) the duration of the conduct or any
19 concealment of it by such party;

20 (C) the profitability of the conduct to such
21 party;

22 (D) the number of products sold or med-
23 ical procedures rendered for compensation, as
24 the case may be, by such party, of the kind

1 causing the harm complained of by the claim-
2 ant;

3 (E) any criminal penalties imposed on such
4 party, as a result of the conduct complained of
5 by the claimant; and

6 (F) the amount of any civil fines assessed
7 against such party as a result of the conduct
8 complained of by the claimant.

9 (2) MAXIMUM AWARD.—The amount of punitive
10 damages, if awarded, in a health care lawsuit may
11 be as much as \$250,000 or as much as two times
12 the amount of economic damages awarded, which-
13 ever is greater. The jury shall not be informed of
14 this limitation.

15 (c) NO CIVIL MONETARY PENALTIES FOR PRODUCTS
16 IN COMPLIANCE WITH FDA STANDARDS.—

17 (1) PUNITIVE DAMAGES.—

18 (A) IN GENERAL.—In addition to the re-
19 quirements of subsection (a), punitive damages
20 may not be awarded against the manufacturer
21 or distributor of a medical product, or a sup-
22 plier of any component or raw material of such
23 medical product, on the basis that the harm to
24 the claimant was caused by the lack of safety
25 or effectiveness of the particular medical prod-

uct involved, unless the claimant demonstrates
by clear and convincing evidence that—

(i) the manufacturer or distributor of
the particular medical product, or supplier
of any component or raw material of such
medical product, failed to comply with a
specific requirement of the Federal Food,
Drug, and Cosmetic Act or the regulations
promulgated thereunder; and

(ii) the harm attributed to the par-
ticular medical product resulted from such
failure to comply with such specific statu-
tory requirement or regulation.

(B) RULE OF CONSTRUCTION.—Subpara-
graph (A) may not be construed as establishing
the obligation of the Food and Drug Adminis-
tration to demonstrate affirmatively that a
manufacturer, distributor, or supplier referred
to in such subparagraph meets any of the con-
ditions described in such subparagraph.

(2) LIABILITY OF HEALTH CARE PROVIDERS.—

A health care provider who prescribes a medical
product approved or cleared by the Food and Drug
Administration shall not be named as a party to a
product liability lawsuit involving such product and

1 shall not be liable to a claimant in a class action
 2 lawsuit against the manufacturer, distributor, or
 3 seller of such product.

4 **SEC. 8. AUTHORIZATION OF PAYMENT OF FUTURE DAM-**
 5 **AGES TO CLAIMANTS IN HEALTH CARE LAW-**
 6 **SUITS.**

7 (a) IN GENERAL.—In any health care lawsuit, if an
 8 award of future damages, without reduction to present
 9 value, equaling or exceeding \$50,000 is made against a
 10 party with sufficient insurance or other assets to fund a
 11 periodic payment of such a judgment, the court shall, at
 12 the request of any party, enter a judgment ordering that
 13 the future damages be paid by periodic payments in ac-
 14 cordance with the Uniform Periodic Payment of Judg-
 15 ments Act promulgated by the National Conference of
 16 Commissioners on Uniform State Laws.

17 (b) APPLICABILITY.—This section applies to all ac-
 18 tions which have not been first set for trial or retrial be-
 19 fore the effective date of this Act.

20 **SEC. 9. DEFINITIONS.**

21 In this Act:

22 (1) ALTERNATIVE DISPUTE RESOLUTION SYS-
 23 TEM; ADR.—The term “alternative dispute resolution
 24 system” or “ADR” means a system that provides
 25 for the resolution of health care lawsuits in a man-

1 ner other than through a civil action brought in a
2 State or Federal court.

3 (2) CLAIMANT.—The term “claimant” means
4 any person who brings a health care lawsuit, includ-
5 ing a person who asserts or claims a right to legal
6 or equitable contribution, indemnity or subrogation,
7 arising out of a health care liability claim or action,
8 and any person on whose behalf such a claim is as-
9 serted or such an action is brought, whether de-
10 ceased, incompetent, or a minor.

11 (3) COLLATERAL SOURCE BENEFITS.—The
12 term “collateral source benefits” means any amount
13 paid or reasonably likely to be paid in the future to
14 or on behalf of the claimant, or any service, product
15 or other benefit provided or reasonably likely to be
16 provided in the future to or on behalf of the claim-
17 ant, as a result of the injury or wrongful death, pur-
18 suant to—

19 (A) any State or Federal health, sickness,
20 income-disability, accident, or workers’ com-
21 pensation law;

22 (B) any health, sickness, income-disability,
23 or accident insurance that provides health bene-
24 fits or income-disability coverage;

1 (C) any contract or agreement of any
2 group, organization, partnership, or corporation
3 to provide, pay for, or reimburse the cost of
4 medical, hospital, dental, or income disability
5 benefits; and

6 (D) any other publicly or privately funded
7 program.

8 (4) COMPENSATORY DAMAGES.—The term
9 “compensatory damages” means objectively
10 verifiable monetary losses incurred as a result of the
11 provision of, use of, or payment for (or failure to
12 provide, use, or pay for) health care services or med-
13 ical products, such as past and future medical ex-
14 penses, loss of past and future earnings, cost of ob-
15 taining domestic services, loss of employment, and
16 loss of business or employment opportunities, dam-
17 ages for physical and emotional pain, suffering, in-
18 convenience, physical impairment, mental anguish,
19 disfigurement, loss of enjoyment of life, loss of soci-
20 ety and companionship, loss of consortium (other
21 than loss of domestic service), hedonic damages, in-
22 jury to reputation, and all other nonpecuniary losses
23 of any kind or nature. The term “compensatory
24 damages” includes economic damages and non-

1 economic damages, as such terms are defined in this
2 section.

3 (5) CONTINGENT FEE.—The term “contingent
4 fee” includes all compensation to any person or per-
5 sons which is payable only if a recovery is effected
6 on behalf of one or more claimants.

7 (6) ECONOMIC DAMAGES.—The term “economic
8 damages” means objectively verifiable monetary
9 losses incurred as a result of the provision of, use
10 of, or payment for (or failure to provide, use, or pay
11 for) health care services or medical products, such as
12 past and future medical expenses, loss of past and
13 future earnings, cost of obtaining domestic services,
14 loss of employment, and loss of business or employ-
15 ment opportunities.

16 (7) HEALTH CARE LAWSUIT.—The term
17 “health care lawsuit” means any health care liability
18 claim concerning the provision of health care goods
19 or services affecting interstate commerce, or any
20 health care liability action concerning the provision
21 of health care goods or services affecting interstate
22 commerce, brought in a State or Federal court or
23 pursuant to an alternative dispute resolution system,
24 against a health care provider, a health care organi-
25 zation, or the manufacturer, distributor, supplier,

1 marketer, promoter, or seller of a medical product,
2 regardless of the theory of liability on which the
3 claim is based, or the number of claimants, plain-
4 tiffs, defendants, or other parties, or the number of
5 claims or causes of action, in which the claimant al-
6 leges a health care liability claim.

7 (8) HEALTH CARE LIABILITY ACTION.—The
8 term “health care liability action” means a civil ac-
9 tion brought in a State or Federal Court or pursu-
10 ant to an alternative dispute resolution system,
11 against a health care provider, a health care organi-
12 zation, or the manufacturer, distributor, supplier,
13 marketer, promoter, or seller of a medical product,
14 regardless of the theory of liability on which the
15 claim is based, or the number of plaintiffs, defend-
16 ants, or other parties, or the number of causes of ac-
17 tion, in which the claimant alleges a health care li-
18 ability claim.

19 (9) HEALTH CARE LIABILITY CLAIM.—The
20 term “health care liability claim” means a demand
21 by any person, whether or not pursuant to ADR,
22 against a health care provider, health care organiza-
23 tion, or the manufacturer, distributor, supplier, mar-
24 keter, promoter, or seller of a medical product, in-
25 cluding, but not limited to, third-party claims, cross-

1 claims, counter-claims, or contribution claims, which
2 are based upon the provision of, use of, or payment
3 for (or the failure to provide, use, or pay for) health
4 care services or medical products, regardless of the
5 theory of liability on which the claim is based, or the
6 number of plaintiffs, defendants, or other parties, or
7 the number of causes of action.

8 (10) HEALTH CARE ORGANIZATION.—The term
9 “health care organization” means any person or en-
10 tity which is obligated to provide or pay for health
11 benefits under any health plan, including any person
12 or entity acting under a contract or arrangement
13 with a health care organization to provide or admin-
14 ister any health benefit.

15 (11) HEALTH CARE PROVIDER.—The term
16 “health care provider” means any person or entity
17 required by State or Federal laws or regulations to
18 be licensed, registered, or certified to provide health
19 care services, and being either so licensed, reg-
20 istered, or certified, or exempted from such require-
21 ment by other statute or regulation.

22 (12) HEALTH CARE GOODS OR SERVICES.—The
23 term “health care goods or services” means any
24 goods or services provided by a health care organiza-
25 tion, provider, or by any individual working under

1 the supervision of a health care provider, that relates
2 to the diagnosis, prevention, or treatment of any
3 human disease or impairment, or the assessment of
4 the health of human beings.

5 (13) MALICIOUS INTENT TO INJURE.—The
6 term “malicious intent to injure” means inten-
7 tionally causing or attempting to cause physical in-
8 jury other than providing health care goods or serv-
9 ices.

10 (14) MEDICAL PRODUCT.—The term “medical
11 product” means a drug or device intended for hu-
12 mans, and the terms “drug” and “device” have the
13 meanings given such terms in sections 201(g)(1) and
14 201(h) of the Federal Food, Drug and Cosmetic Act
15 (21 U.S.C. 321), respectively, including any compo-
16 nent or raw material used therein, but excluding
17 health care services.

18 (15) NONECONOMIC DAMAGES.—The term
19 “noneconomic damages” means damages for phys-
20 ical and emotional pain, suffering, inconvenience,
21 physical impairment, mental anguish, disfigurement,
22 loss of enjoyment of life, loss of society and compan-
23 ionship, loss of consortium (other than loss of do-
24 mestic service), hedonic damages, injury to reputa-

tion, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States, or any political subdivision thereof.

1 **SEC. 10. EFFECT ON OTHER LAWS.**

2 (a) VACCINE INJURY.—

3 (1) To the extent that title XXI of the Public
4 Health Service Act establishes a Federal rule of law
5 applicable to a civil action brought for a vaccine-re-
6 lated injury or death—

7 (A) this Act does not affect the application
8 of the rule of law to such an action; and

9 (B) any rule of law prescribed by this Act
10 in conflict with a rule of law of such title XXI
11 shall not apply to such action.

12 (2) If there is an aspect of a civil action
13 brought for a vaccine-related injury or death to
14 which a Federal rule of law under title XXI of the
15 Public Health Service Act does not apply, then this
16 Act or otherwise applicable law (as determined
17 under this Act) will apply to such aspect of such ac-
18 tion.

19 (b) OTHER FEDERAL LAW.—Except as provided in
20 this section, nothing in this Act shall be deemed to affect
21 any defense available to a defendant in a health care law-
22 suit or action under any other provision of Federal law.

23 **SEC. 11. STATE FLEXIBILITY AND PROTECTION OF STATES’**
24 **RIGHTS.**

25 (a) HEALTH CARE LAWSUITS.—The provisions gov-
26 erning health care lawsuits set forth in this Act preempt,

1 subject to subsections (b) and (c), State law to the extent
2 that State law prevents the application of any provisions
3 of law established by or under this Act. The provisions
4 governing health care lawsuits set forth in this Act super-
5 sede chapter 171 of title 28, United States Code, to the
6 extent that such chapter—

7 (1) provides for a greater amount of damages
8 or contingent fees, a longer period in which a health
9 care lawsuit may be commenced, or a reduced appli-
10 cability or scope of periodic payment of future dam-
11 ages, than provided in this Act; or

12 (2) prohibits the introduction of evidence re-
13 garding collateral source benefits, or mandates or
14 permits subrogation or a lien on collateral source
15 benefits.

16 (b) PROTECTION OF STATES' RIGHTS.—Any issue
17 that is not governed by any provision of law established
18 by or under this Act (including State standards of neg-
19 ligence) shall be governed by otherwise applicable State
20 or Federal law. This Act does not preempt or supersede
21 any law that imposes greater protections (such as a short-
22 er statute of limitations) for health care providers and
23 health care organizations from liability, loss, or damages
24 than those provided by this Act.

1 (c) STATE FLEXIBILITY.—No provision of this Act
2 shall be construed to preempt—

3 (1) any State law (whether effective before, on,
4 or after the date of the enactment of this Act) that
5 specifies a particular monetary amount of compen-
6 satory or punitive damages (or the total amount of
7 damages) that may be awarded in a health care law-
8 suit, regardless of whether such monetary amount is
9 greater or lesser than is provided for under this Act,
10 notwithstanding section 4(a); or

11 (2) any defense available to a party in a health
12 care lawsuit under any other provision of State or
13 Federal law.

14 **SEC. 12. APPLICABILITY; EFFECTIVE DATE.**

15 This Act shall apply to any health care lawsuit
16 brought in a Federal or State court, or subject to an alter-
17 native dispute resolution system, that is initiated on or
18 after the date of the enactment of this Act, except that
19 any health care lawsuit arising from an injury occurring
20 prior to the date of the enactment of this Act shall be
21 governed by the applicable statute of limitations provisions
22 in effect at the time the injury occurred.

23 **SEC. 13. SENSE OF CONGRESS.**

24 It is the sense of Congress that a health insurer
25 should be liable for damages for harm caused when it

- 1 makes a decision as to what care is medically necessary
- 2 and appropriate.

